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To require the Secretary of Defense to develop procurement policy and guidance to mitigate consulting company conflict of interests related to national security and foreign policy.

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2023

Ms. ERNST (for herself, Mr. KELLY, and Ms. HASSAN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To require the Secretary of Defense to develop procurement policy and guidance to mitigate consulting company conflict of interests related to national security and foreign policy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Combating Obstructive
5 National Security Underreporting of Legitimate Threats
6 Act of 2023” or the “CONSULT Act of 2023”.

1 **SEC. 2. ORGANIZATIONAL CONFLICT OF INTERESTS RELAT-**
2 **ING TO NATIONAL SECURITY AND FOREIGN**
3 **POLICY.**

4 (a) FINDINGS.—Congress makes the following find-
5 ings:

6 (1) The reliance by the Department of Defense
7 on consultants for mission support services can cre-
8 ate potential organizational conflicts of interest re-
9 lated to national security matters due to competing
10 interests as a result of business relationships with
11 foreign adversarial nations and entities.

12 (2) It is imperative for consultants providing
13 mission support services to the Department of De-
14 fense related to national security matters and for-
15 eign policy interests to not be providing mission sup-
16 port services to foreign adversaries regarding efforts
17 counter to the national security and foreign policy
18 interests of the United States.

19 (3) Protecting against organizational conflicts
20 of interest related to foreign adversarial nations and
21 entities providing Federal mission support services is
22 essential to the national security and foreign policy
23 interests of the United States.

24 (b) PROHIBITION RELATED TO CERTAIN CONTRACTS
25 OR GRANTS.—

1 (1) IN GENERAL.—The Secretary may not after
2 the date of the enactment of this Act enter into,
3 renew, or extend a contract with, or award a grant
4 to, a covered consultancy.

5 (2) DISCLOSURE.—Any individual or entity that
6 submits an offer or bid for a contract to provide con-
7 sulting services to the Department of Defense shall
8 disclose in such offer or bid any information relevant
9 to the individual or entity with respect to the prohi-
10 bition under paragraph (1), including—

11 (A) whether the individual or entity has
12 entered into a contract with, or received grants
13 or other financial awards from, a covered entity
14 in the five years prior to submitting the offer
15 or bid; and

16 (B) at the time the contract to provide
17 consulting services to the Department will be
18 entered into, whether—

19 (i) any contract entered into by the
20 individual or entity with a covered entity
21 will still be in effect; and

22 (ii) the individual or entity will be re-
23 ceiving funds from, or have any unobli-
24 gated or unexpended funds received under,

1 any grant or other financial award from a
2 covered entity.

3 (3) PENALTIES.—

4 (A) IN GENERAL.—If the Secretary deter-
5 mines that a contractor of the Department
6 failed to make the disclosure required by para-
7 graph (2), the Secretary shall—

8 (i) terminate the applicable contract
9 for cause; and

10 (ii) initiate a suspension and debar-
11 ment proceeding with respect to the con-
12 tractor.

13 (B) MAXIMUM LENGTH OF DEBARMENT.—

14 The maximum length of a debarment of a con-
15 tractor under this paragraph shall be a period
16 of 5 years.

17 (c) CERTIFICATION.—

18 (1) IN GENERAL.—After a determination by the
19 Secretary that a company is a covered consultancy,
20 such company may submit to the Secretary a written
21 and signed certification that—

22 (A) the consultancy no longer is—

23 (i) performing under a contract with a
24 covered entity;

1 (ii) carrying out activities under a
2 grant received from a covered entity; or

3 (iii) receiving funds, or have any un-
4 obligated or unexpended funds received,
5 from a covered entity; and

6 (B) will not receive or pursue a contract
7 with a covered entity or a grant or other finan-
8 cial award from a covered entity—

9 (i) during the term of a contract with
10 the Department of Defense; or

11 (ii) while receiving funds from the De-
12 partment of Defense, or obligating or ex-
13 pending any such funds.

14 (2) STATUS CHANGE.—Upon the approval by
15 the Secretary of a certification submitted under
16 paragraph (1), a company is deemed to not be a cov-
17 ered consultancy until the expiration of the certifi-
18 cation under paragraph (3).

19 (3) EXPIRATION.—A certification submitted by
20 a company under paragraph (1) shall expire on the
21 earlier of the date on which the company, after sub-
22 mitting such certification enters into, extends, re-
23 news, or performs under a contract with a covered
24 entity for consulting services.

1 (d) GUIDANCE.—The Secretary shall issue procure-
2 ment policies for the Department of Defense as follows:

3 (1) Policies to implement the prohibition under
4 subsection (b)(1).

5 (2) Best practices to avoid becoming covered
6 consultancies under this section and for covered
7 consultancies to end their status as such.

8 (3) A policy articulating the exact provisions
9 and terms relating to the requirements of para-
10 graphs (2) and (3) of subsection (b) to be included
11 in solicitations, contracts, and grants of the Depart-
12 ment.

13 (e) REVISION OF DEPARTMENT OF DEFENSE ACQUI-
14 SITION REGULATION.—Not later than one year after the
15 date of the enactment of this Act, the Secretary shall re-
16 vise the Defense Federal Acquisition Regulation Supple-
17 ment to implement this section.

18 (f) DEFINITIONS.—In this section:

19 (1) CONSULTING SERVICES.—The term “con-
20 sulting services” has the meaning given the term
21 “advisory and assistance services” in section 2.101
22 of the Federal Acquisition Regulation, except that—

23 (A) the term does not include the services
24 described in paragraph (3) of such section; and

1 (B) each instance of the term “Federal” is
2 replaced with “client”.

3 (2) COVERED CONSULTANCY.—The term “cov-
4 ered consultancy” means a company that, itself or
5 any subsidiary or affiliate thereof, in immediately
6 preceding one year period entered into, extended, re-
7 newed, or performed under a contract with a covered
8 entity for consulting services.

9 (3) COVERED ENTITY.—The term “covered en-
10 tity” means any of the following:

11 (A) The Government of the People’s Re-
12 public of China.

13 (B) The Chinese Communist Party.

14 (C) The People’s Liberation Army, the
15 Ministry of State Security, or other security
16 service or intelligence agency of the People’s
17 Republic of China.

18 (D) Any entity on the Non-SDN Chinese
19 Military-Industrial Complex Companies List
20 (NS–CMIC–List) maintained by the Office of
21 Foreign Assets Control of the Department of
22 the Treasury under Executive Order 14032 (86
23 Fed. Reg. 30145; relating to addressing the
24 threat from securities investments that finance

1 certain companies of the People’s Republic of
2 China), or any successor order.

3 (E) Any Chinese military company identi-
4 fied by the Secretary of Defense pursuant to
5 section 1237(b) of the Strom Thurmond Na-
6 tional Defense Authorization Act for Fiscal
7 Year 1999 (Public Law 105–261; 50 U.S.C.
8 1701 note).

9 (F) Any Chinese State-owned entity or
10 other entity under the ownership, or control, di-
11 rectly or indirectly, of the Government of the
12 People’s Republic of China or the Chinese Com-
13 munist Party that is engaged in one or more
14 national security industries.

15 (G) The Government of the Russian Fed-
16 eration, any Russian State-owned entity, or any
17 entity sanctioned by the Secretary of the Treas-
18 ury under Executive Order 13662 titled “Block-
19 ing Property of Additional Persons Contrib-
20 uting to the Situation in Ukraine”(79 Fed.
21 Reg. 16169).

22 (H) The government or any State-owned
23 entity of any country if the Secretary of State
24 determines that such government has repeat-

1 edly provided support for acts of international
2 terrorism pursuant to—

3 (i) section 1754(c)(1)(A) of the Ex-
4 port Control Reform Act of 2018 (50
5 U.S.C. 4318(c)(1)(A));

6 (ii) section 620A of the Foreign As-
7 sistance Act of 1961 (22 U.S.C. 2371);

8 (iii) section 40 of the Arms Export
9 Control Act (22 U.S.C. 2780); or

10 (iv) any other provision of law.

11 (I) Any entity included on any of the fol-
12 lowing lists maintained by the Department of
13 Commerce:

14 (i) The Entity List set forth in Sup-
15 plement No. 4 to part 744 of the Export
16 Administration Regulations.

17 (ii) The Denied Persons List as de-
18 scribed in section 764.3(a)(2) of the Ex-
19 port Administration Regulations.

20 (iii) The Unverified List set forth in
21 Supplement No. 6 to part 744 of the Ex-
22 port Administration Regulations.

23 (J) The Military End User List set forth
24 in Supplement No. 7 to part 744 of the Export
25 Administration Regulations.

1 (4) EXPORT ADMINISTRATION REGULATIONS.—
2 The term “Export Administration Regulations”
3 means the regulations set forth in subchapter C of
4 chapter VII of title 15, Code of Federal Regulations.

5 (5) NATIONAL SECURITY INDUSTRY.—The term
6 “national security industry” means—

7 (A) a military-related industry;

8 (B) semiconductor production;

9 (C) researching or commercializing quan-
10 tum computing;

11 (D) producing products or services that
12 use artificial intelligence;

13 (E) the biotechnology industry;

14 (F) the cybersecurity industry; or

15 (G) the mining, processing, or refining of
16 critical minerals (as such term is defined in sec-
17 tion 7002(a) of the Energy Act of 2020 (30
18 U.S.C. 1606(a))) for use by a covered entity.

19 (6) SECRETARY.—The term “Secretary” means
20 the Secretary of Defense.

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